BORA LASKIN LAW LIBRARY
3 1761 06081937 2

UNIVERSITY OF TORONTO
FACULTY OF LAW

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2011 – 2012)

VOLUME I

KE
1246
.B78
2011
v.1
c.1

21827281.6

BORA LASKIN LAW LIBRARY

JAN - 4 2012

FACULTY OF LAW
UNIVERSITY OF TORONTO

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2011 – 2012)

VOLUME I

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/mediadefamationl01brus_4

MEDIA AND DEFAMATION LAW

(LAW 369H1S)

Bert Bruser and Paul Schabas

CASES AND MATERIALS

(2011-2012)

CONTENTS **PAGE**

VOLUME I - LIBEL

1. What is defamatory and who can sue? 1
Robertson & Nicol, *Media Law* (excerpts) 2
"Some in Huntsville 'getting nervous'" 9
Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd (1934), 50 T.L.R. 581 (C.A.) 12
"Why are so many gays still hiding in the closet?" 17
"Correction: Columnist meant to say singer supports equality" 18
"Racial slur rocks Liberal candidate" 19
"'Son of a bitch' not libellous; 'sick son of a bitch' is" 20
"Nic At Nite: A tale of hooters and heifers in old Hogtown" 21
"Order your drink and duck, dope" 28
"Dorothy Parsons clenched the sink"... 29
Lewis v. Daily Telegraph Ltd., [1963] 2 All ER 151 30
"Canada slow to accept Haitian rape risk" 38
"Singled out" 41
Gauthier v. Toronto Star (2003), 228 D.L.R (4th) 748 (Ont. Sup. Ct.), aff'd (2004) 45 D.L.R. (4th) 169 (Ont. C.A.) 42A
Malhab v. Diffusion Metromedia CMR Inc., 2011 SCC 9 (excerpts) 43
"Tenants seek ouster of priest, directors" 63

2. Defences to Libel **64**
(a) Truth/Justification **65**
"Police chief for Niagara not picked: Commission" 66
Sidorsky v. CFCN Communications Ltd (1994), 23 Alta. L.R. (3d) 116 (Q.B.) (excerpts) 67
PG Restaurant Ltd v. Northern Interior Health Board, 2005 BCCA 210 68

(b) Fair Comment **81**
Excerpt from *Toronto Star* column by Joey Slinger 82
"Paradise lost at Passe Muraille – First-night theatre-goers says things went all to pot" 83
Transcript of CKNW broadcast, October 25, 1999 84
WIC Radio, et al. v. Kari Simpson, 2008 SCC 40 86

"Conspiracy" cartoon by Josh Beutel 110
Eye Weekly, July 23 and 30, 1998 111
"Killer was drawn to others' online rage," *Toronto Star*, July 29, 2011 113
"Melanie Phillips Apology," *Toronto Star*, Aug. 26, 2011 114

(c) Privilege 115
"Developer ordered to clean up land near houses" 116
"Woman sues orphanage nuns" 117
"Executive sold secrets to CIA" 118
"Roedica" article 119
McCarton Turkington Breen v. Times Newspapers, [2001] 2 AC 277 121

(d) Qualified Privilege and Responsible Communication 130
New York Times Co. v Sullivan, 376 U.S. 254 (1964) 131
Hill v. Church of Scientology, [1995] 2 S.C.R. 1130 (excerpts) 157
"Saudi Officials Monitor Certain Bank Accounts – Focus is on Those With Potential Terrorist Ties," *Wall Street Journal*, Feb. 6, 2002 180
Jameel v. Wall Street Journal, [2007] 1 AC 359 182
Flood v. Times Newspapers Ltd,. [2010] EWCA Civ 804, appeal heard by U.K. Supreme Court on October 17, 2011 206
Grant v. Torstar Corp., 2009 SCC 61 229
Prince Radu of Hohenzollern v. Marco Houston and Sena Julia Publicatus Ltd., [2007] EWHC 2735 (QB) (excerpts) 260
"Adam Giambrone says sorry for relationship with young woman" 273
"Former MP Rahim Jaffer connected to alleged conman" 275
Nazim Gillani Libel Notice 279
"Ruby Dhalla's nanny trouble" 282
"Conviction tossed out over 'police brutality'" 285
"Officer breaks 'little' accountant's arm, but no charges laid" 288

3. Malice 291
Horrocks v. Lowe, [1975] AC 135 (HL) 292
Paul v. Cheng, [2000] HKCFA 88 301

4. Apologies/Corrections 317
Murray Alter's Talent Associates Ltd. v. Toronto Star Newspapers Ltd., [1995] 124 D.L.R. (4th) 105 (Ont. Div. Ct.) 318
Sun Media Retraction and Apology to George Soros 334

5. Damages 335
Walker v. CFTO Ltd. (1987), 59 OR (2d) 104 (C.A.) 336
Skene and Claassen, Canadian Defamation Verdicts (to Sept. 1, 2011) 348

6. Defamation and the Internet 357
Bunt v. Tilley, [2006] EWHC 407 (QB) 358
United States *Communications Decency Act*, 47 U.S.C. § 230 (excerpt) 366

Carter v. B.C. Federation of Foster Parents Assn. [2004] B.C.J. No. 192 (Sup. Ct.)(excerpts).367
Carter v. B.C. Federation of Foster Parents Assn. [2005] B.C.J. No. 1720 (C.A.) (excerpts)...372
Times Newspapers (Nos. 1 and 2) v. U.K., [2009] ECHR 3002/03.....374
Crookes v. Newton, 2011 SCC 47 (excerpts).....386
A.B. v. Bragg Communication Inc., 2011 NSCA 26, leave to appeal to S.C.C. granted (case no. 34240) 400
Barrick Gold Corp. v. Lopehandia, [2004] O.J. No. 2329 (C.A.) (excerpts).....416
Baglow v. Smith, 2011 ONSC 5131 423
Smith v. ADVFN plc, [2008] EWHC 1797 (QB) (excerpts).....438
"Internet chat more likely slander than libel, says High Court".....440
"Mosley orgy judge blocks web forum libel writ onslaught".....442
Public message board on www.blogto.com website.....445
Public message board on *Toronto Star* website (screenshot) 450
"'Officer Bubbles' launches suit against YouTube" 451
"Helping towns cope with sprawl" 452
"The longtail of news: to unpublish or not to unpublish".....455
Metropolitan International Schools Ltd. v. Google. et al., [2009] EWHC 1765 (QB) (excerpts).....477
Dow Jones & Co. v. Gutnick (2002), 210 C.L.R. 575 (HCA) 495
Bangoura v. Washington Post (2005), 258 D.L.R. (4th) 341 (Ont C.A.).....515
Black v. Breeden, 2010 ONCA 547, appeal to S.C.C. heard March 22, 2011.....526
U.S. *SPEECH Act,* H.R. 2765 (2010).....538
"A national disgrace, a global menace, and a pre-democratic anachronism".....542
"Libel Without Borders".....545

7. Privacy 546
Vice-Versa magazine, June 1988 547
Mosley v. News Group Newspapers, [2008] EWHC 1777 (QB) (excerpts).....548
"Max Mosley goes forum shopping in Paris," *The Independent*, 4 June 2008.....559
Nitsopoulos v. Wong, 2008 CanLii 45407 (Ont. Sup. Ct.) 561
"Google Street View worries privacy experts".....565
"Google contravened Canadian privacy law, investigation finds," Office of the Privacy Commissioner of Canada.....567
"Seniors at risk in retirement home, investigation reveals".....570
"Keeping secrets in the age of tweets," *The Economist*, May 26, 2011 573
"Guidance Document: Electronic Disclosure of Personal Information in the Decisions of Administrative Tribunals," *Office of the Privacy Commissioner*, February 2010 576
"Reflections on Privacy from the Bench," *Office of the Privacy Commissioner* .....
.....581

8. Legislation and Jury Charge 588
Libel and Slander Act, R.S.O. 1990, c. L.12.....589
United Kingdom Draft Defamation Bill (2011) 594
Submission of Canadian Media Lawyers Association (Ad IDEM) to U.K. Joint Committee on the Draft Defamation Bill (2011) 601

VOLUME II – NEWSGATHERING

9. Open Courts **613**
Edmonton Journal v. Alberta, [1989] 2 S.C.R. 1326 614

10. Publication Bans **631**
"Gagged" (Tori Stafford murder case) 632
"The criminal case you can't know about," *Toronto Star*, Nov. 2, 2011 634
"Experts shocked by publication ban," *Toronto Star*, Nov. 3, 2011 636
"Karla Teale convicted" 637
Dagenais v. CBC, [1994] 3 S.C.R. 835 639
R. v. Mentuck, 2001 SCC 76 655
Toronto Star Newspapers Ltd. v. Ontario, 2005 SCC 41 672
Toronto Star Newspapers Ltd. v. Canada, 2010 SCC 21 680
"Respected teacher had 'dark side,' court told – Kingston man faces sex charges" 694
"How sex-attack case faltered," and apology 695
"Claim allowed to proceed over breach of publication ban" 697
Jan Wong, "On naming names in sexual assault" 698
"Abuse, rape uncovered in nursing homes," *Toronto Star*, Nov. 17, 2011 699
"[Redacted]: 1 Year Probation for Manslaughter – 2009 draft pick [redacted] talks to Point Blank" 702
R. v. Kossyrine & Vorobiov, 2011 ONSC 6081 705

11. Access **712**
"Justice is blind, and in Ontario, it's also becoming mute" 713
R. v. Canadian Broadcasting Corporation, 2010 ONCA 726 715
Canadian Broadcasting Corp. v. The Queen, 2011 SCC 3 (excerpts) 725
Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23 733
Order of the Information and Privacy Commissioner of Ontario – Human Rights Tribunal of Ontario, October 21, 2010 749
"Investigation into a Secret Court: Here's what we found," *Toronto Star*, Oct. 29, 2011 762
"Access to exhibits still denied, media lawyers say," *Law Times,* October 17, 2011 764

12. Contempt **765**
Bert Bruser, "Often my views are unpopular" 766
"A 25 year old drifter" 767
"Seasoned police officers" 768
"It was an easy arrest" 769
"The Toronto police officer" 770
"Cocaine Trial Begins" 771
"Dad faces retrial in baby death" 772
"2 suspects charged in slaying of boy, 11" 773
"Suspect 'well-known' to police" 774

13. Sources and Search Warrants **775**
Reid v. Telegram Publishing Co., [1961] OR 418 (S.C.) 776
CBC c. Lessard, [1991] 3 S.C.R. 421 783
"Judith Miller Goes to Jail" 793
"White House proposes changes in bill protecting reporters' confidentiality" 797
"Untangling the News of the World scandal: A Timeline," *National Post*, July 15, 2011 799
"Star investigation: Slacking off gets high marks at this 'high school,'" *Toronto Star*, Sept. 16, 2011 802
"Dealing With Assange and the WikiLeaks Secrets," *NYT Magazine*, Jan. 26, 2011 806
R. v. National Post, 2010 SCC 16 824
Globe and Mail v. Canada (A.G.), 2010 SCC 41 852
Contempt of Court Act (United Kingdom), 1981 c.49, section 10 873

14. Statutory Provisions **875**
Criminal Code, excerpts 876
Courts of Justice Act, excerpts. 883